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Appeal from the Circuit Court of Nelson county. Modified and affirmed.

*P. R. Massie, S. V. Kemp*, for the appellants.

*W. K. Allen, C. L. Martin*, for the appellee.

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INTERSTATE FIRE INSURANCE COMPANY *v.* McFALL.

Richmond, November 21, 1912.

[7 Va. App. 150.]

**1. Equity—Jurisdiction—Contracts—Insurance.**—Where a contract for insurance of a building has been made with an agent of an insurance company, who is authorized to issue and deliver policies, and the amount of the premium agreed upon, to be paid upon issuance and delivery of the policy contracted for, but before the policy is issued the building is destroyed by fire, a court of equity has jurisdiction to enforce payment of the policy at the suit of the assured against the insurance company.

**2. Insurance—Agent—Authority.**—It is within the power of an agent, authorized to solicit risks and to issue and deliver policies of insurance, to give thirty days' time for the payment of a premium.

**3. Idem—Apportionment.**—Where it does not appear that the parties to a contract of insurance contemplated apportionment, and there was a total loss upon what was in substance a single risk, failure to make such apportionment does not invalidate the contract.

**4. Idem—Single Risk.**—Where it appears from the proof that the property insured constitutes a single structure, though it is spoken of as a "store building, warehouse and barn," it is in substance a single risk.

**5. Idem—Recovery—Premium.**—Where it appears that the premium on a policy of insurance contracted for was not paid and a recovery on the policy is allowed, credit should be given for the amount of the premium.

Appeal from Circuit Court of Wise county. Amended and affirmed.

*R. W. Withers, Irvine & Morison*, for the appellant.

*Vicars & Peery*, for the appellee.

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GROVE *v.* LEMLEY.

Richmond, November 21, 1912.

[7 Va. App. 155.]

**1. Limitations—At Law and in Equity—Mutual Mistake—Fraud.**—In cases of mutual mistake and fraud courts of law and courts of equity, in Virginia, apply different rules with respect to the defense

of the statute of limitations. The statute in such cases makes no exception, and in a court of law the limitation runs from the date of settlement and payment; but in a court of equity, when the plaintiff is without fault, the statute will be held to run only from the discovery of the fraud or mistake. To avail of this equitable jurisdiction, however, the plaintiff must have acted in good faith and with reasonable caution and diligence.

Appeal from Circuit Court of Shenandoah county. Affirmed.  
*A. C. Stickley, R. T. Barton, M. L. Walton*, for the appellant.  
*C. B. Guyer, F. S. Tavenner*, for the appellee.

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CITY OF LYNCHBURG *v.* MITCHELL et al.

Richmond, November 21, 1912.

[7 Va. App. 179.]

**1. Actions—Right to Bring—Purchaser—Damages—Assignment.**—Purchasers of property, who have acquired by assignment all the rights of their grantors to damages for diversion of water from the property prior to their purchase, have a right to recover damages resulting from the diversion, although the price paid by them for the property was much less than its value before the diversion. It is immaterial to the defendant whether the assignee of such damages is the purchaser of the land, or it was purchased by some other person, or still remains the property of the assignor.

**2. Damages—Excessiveness.**—Where there was evidence to the effect that the value of property, before the diversion of water for which damages were asked, was \$10,000 to \$15,000, that by the diversion it was reduced in value from one-half to three-fourth, that the mill upon the property required nearly eight millions of gallons of water daily to run it at its full capacity, that there were diverted between three and four million gallons daily, the pipes having a capacity of eight millions daily, etc.: Held, that a verdict of \$5,000 for diversion of the water was not excessive.

Error to Circuit Court of Amherst county. Affirmed.

*N. C. Manson, Jr.*, for the plaintiff in error.  
*Aubrey E. Strode, Volney E. Howard*, for the defendants in error.

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McGUIRE et als. *v.* BROWN, GUARDIAN, et als.

Richmond, November 21, 1912.

[7 Va. App. 183.]

**1. Contracts—Construction—Intention.**—In the construction of contracts the intention of the parties should be considered and given